IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

CRP.No. 2157 OF 1999 (H)

CC.953/1973 OF TALUK LAND BOARD, CHITTUR

REVN. PETITIONER:

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI. K.G. BHASKARAN.

RESPONDENTS:

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1. SMT. BALKIS UMMA, D/O. NOOR MOHAMMED ROWTHER, KAMBRATH CHALLA, MUTHALAMADA.
2. SRI. ABDUL KAREEM, S/O. NOOR MOHAMMED ROWTHER.
3. SRI. BADHARUDHEEN, S/O. DO.
4. SRI. JAILABUDHEEN, S/O. DO.
5. SRI. SHAIK MUSTAFA, S/O. DO.
6. SMT. UMMAL RAHIMMA, D/O. DO.
7. SMT. ROKKIYA, D/O. DO.

BY ADV. SRI.PRAVEEN VYASAN
SRI.SUJITH MATHEW JOSE

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN, J.

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C.R.P. NO. 2157 OF 1999

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DATED THIS, THE 19TH DAY OF JULY, 2007.

O R D E R

State of Kerala is the revision petitioner. The challenge is against the order passed by the Taluk Land Board, Chittoor, in C.C. 953 of 1973, dated 9th July, 1998.

2. This case has got a chequered history. Hence the facts of the case for the purpose of appreciating the contentions between the parties are briefly stated as hereunder:

In the ceiling case of a declarant Sri. K.N. Noor Mohammed Rawther he set up a contention that an extent of 15.30 Acres of land was gifted to his son K.N. Abdul Kareem on 5.4.1970 orally and subsequent to that, to avoid problems of the family, he executed a stamp paper document on 15.4.1970 as per Ext. B1 and a second document in 1975 by a registered deed as according to him, in order to avail loan a registered deed was found necessary. He contended that the gift in favour of his son is a valid transfer by virtue of Section 84 (1)(A) of the Kerala Land Reforms Act and

therefore, the land covered by the gift has to be excluded from the account of the declarant for the purpose of reckoning the extent of land possessed or held by them as on 1.1.1970. It was contended that Ext.B1, though not a registered document, is not hit by the provisions contained in Section 123 of the Transfer of Property Act because of the saving provisions contained in Section 129 of the said Act since the gift made is valid as per the personal law applicable to Muslims. According to him, as per Sections 147, 149 and 150 of the Mohammedan Law, any Muslim can gift his property orally and as such, the oral gifts are valid in the case of Mohammedan. According to him, delivery of property and acceptance of the same by the donee alone are essential and in this case, an extent of 15.30 Acres of land were taken possession of by the donee right from 5.4.1970, the date of the oral gift and the donee being in possession of the same after paying tax as evidenced by Ext. B2 series of receipts, the gift have been completed in all respects and no further legal formalities are required in the case of such Mohammedan gift. The Land Board accepted the contention and upheld the gift and excluded an extent of 15.30 Acres of land covered by the gift while reckoning the ceiling limit of the declarant. Proceedings were thus completed based on such finding. The said order was challenged by the State before this Court in C.R.P. 1147/1991. This

Court found that some of the contentions put forth by the Government Pleader appearing on behalf of the State were not considered properly and hence the civil revision petition was allowed by way of remand to the Land Board for fresh consideration of the matter in accordance with law. Thereafter, by order dated 9.7.1998, which is impugned in this civil revision petition, the Taluk Land Board accepted the gift as valid and saved under Section 84(1)(A) and not hit by the main provision under Section 84 (1) of the Kerala Land Reforms Act. It is aggrieved thereby, that the State has filed this revision petition.

3. The only point that arises for consideration is regarding the correctness or otherwise of the decision rendered by the Taluk Land Board holding that the gift is not hit by the main provision and whether it is saved by sub-section 1A of Section 84 of the Kerala Land Reforms Act.

4. The discussion on the contention raised by the parties is at page 9 of the order impugned in this revision (order of the Taluk Land Board). It refers to the deposition of the declarant, his son and one witness and the recitals in the unregistered gift deed dated 15.4.1970 to establish that there is an oral gift deed dated 5.4.1970 and that there is no valid reason to doubt their credibility. As far as the unregistered gift deed dated 15.4.1970 is concerned, it was held that stamp paper was purchased on 14.4.1970 and

there is no reason to suspect that this document was created after 15.4.1970. As regards the registered gift deed, it was still subsequent to the unregistered deed and is dated 21.2.1975. It was held that the recitals in the registered deeds show that Abdul Kareem was in possession of the land since 1970 and that he was paying tax. Therefore, the recitals contained in 1975 document was accepted. The tax receipt produced were related to the year 1970-71, 74-75, and 75-76 and according to the Tribunal, the donee had paid tax for the year 1970-74, on 9.10.1973, for 1974-75 on 18.1.1975 and for 1975-76 on 13.11.1975. There is also recitals in the registered document of the year 1975 that Abdul Kareem was paying tax from 1970 onwards. Reference was made to the unregistered document Ext.B1 and the recitals contained therein which is extracted at page 10 of the order as follows:

5. Therefore, the definite contention of the declarant was that there was an oral gift on 5.4.1970 of an extent of 15.30 Acres in favour of his son Abdul Kareem, that Abdul Kareem, the donee accepted the gift during the life time of the donor and he was paying the tax etc., that the unregistered

deed dated 15.4.1970 merely reiterates or acknowledges the oral gift dated 5.4.1970, as could be seen from the recitals contained therein and the relevant portion which is extracted as above and the second registered document also only acknowledges the previous oral gift deed made on 5.4.1970. Therefore, the gift, as far as the declarant is concerned, was orally made on 5.4.1970 and as per the rule of Mohammedan Law, such oral gift is valid. His further contention is that though such oral gift was made after 1.1.1970, it is not hit by the main provision under Section 84(1) as it is saved by sub-section 1A of Section 84.

6. It is true that an oral gift by the Rule of Mohammedan Law is valid and saved by Section 129 of the Transfer of Property Act. Though Section 123 of the Transfer of Property Act prescribes the manner as to how a transfer by way of gift is to be effected, namely, by registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Section 129 of the Transfer of Property Act says that nothing in Chapter VII relates to gifts of moveable property made in contemplation of death or shall be deemed to affect any rule of Muhammadan Law. Therefore, the oral gift made as per the rule of Mohammadan Law is to be held as valid.

7. Then the question is as to whether by virtue of Section 84 of the Kerala Land Reforms Act, the oral gift in favour of Abdul Kareem made on

5.4.1970 is deemed to be a transfer intended to defeat the provisions of the Act and therefore is it invalid or is it a case saved by any of the provisions thereunder?

8. As per Section 84(1) of the Kerala Land Reforms Act, notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected after the date of publication of the Kerala Land Reforms Bill, 1963, in the Gazette, otherwise than by way of partition or in favour of a person who was a tenant of the holding before the 27th July, 1960 and continued to be so till the date of transfer; or otherwise gift in favour of their son or daughter or son or daughter of his pre-deceased son or daughter by any person owning or holding land in excess of the ceiling area shall be deemed to be transfers calculated to defeat the provisions of this Act and shall be invalid.

9. As per sub-section 2 of Section 84, notwithstanding anything contained in any law for the time being in force, all voluntary transfers effected by any person other than a family or any member thereof or by an adult unmarried person owning or holding land in excess of the ceiling area after the 1st July, 1969, otherwise than by way of partition or in favour of a person who was a tenant of the holding before 27.7.1960 and continued to be so till the date of transfer shall be deemed to be transfers calculated to

defeat the provision of the Act and shall be invalid. Therefore, by virtue of sub-section 2 of Section 84 any transfer effected by any person owning or holding land in excess of the ceiling area after 1.7.1969 by way of a partition or in favour of a tenant who holds the land before 27.7.1960 and who continues to be so, will be invalid. However, by virtue of sub-section 1A of Section 84, a gift executed during the period commencing on the first day of January, 1970 and ending with the 5th day of November, 1974, by a person owning or holding land in excess of the ceiling area in favour of his son or daughter or the son or daughter of his predeceased son or daughter shall be not deemed to be or ever to have been invalid if the extent of the land comprised in the gift does not exceed the ceiling area specified in clause (a) of sub-section (1) of Section 82 and if the extent of the land comprised in the gift exceeds the ceiling area specified in the said clause, to the extent of that ceiling area. However, that saving will not apply in case it is a transfer to a person who is an unmarried minor on the first day of January, 1970. Therefore, on a combined reading of sub-section 1A and sub-section 2 of Section 84, it admits of no doubt that if it is a transfer by way of gift between 1964 and 1970 by a person holding land in excess of ceiling in favour of his son, it will not be hit by Section 84(1) of the Act.

10. But in this case, the oral gift is on 5.4.1970 that is, after 1.1.1970.

Such transfers by way of gift is invalid by virtue of sub-section 2 of Section 84. Saving under Section 1A will apply only if it is a voluntary gift by means of a gift deed. In this case, the transfer is not by means of a gift deed, but it is an oral gift. Thus for the purpose of reckoning the law and possession of the declarant as on 1.1.1970 the land transferred by oral gift after 1.1.1970 cannot be excluded. The gift may be otherwise valid but not so under the Land Reforms Act. The subsequent deeds are only acknowledgments or declaration of the gift dated 5.4.1970. If so, the finding of the Taluk Land Board that such gifts are saved is clearly erroneous in law.

In such circumstances, the civil revision petition is allowed by way of remand. The order of the Taluk Land Board is set aside and the matter is remitted to that authority for passing fresh orders in accordance with law and subject to what is stated above.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. 2157 OF 1999

O R D E R

19TH JULY, 2007.